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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,848	07/10/2003	James R. Gallagher	AUS920030469US1	1738
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IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			EXAMINER TRUONG, LOAN	
			ART UNIT	PAPER NUMBER
			2114	

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/616,848	Applicant(s) GALLAGHER ET AL.	
	Examiner LOAN TRUONG	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 15-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In regards to claims 15-21 the claims are directed to nonstatutory subject matter. The claims disclose a computer readable medium as being one of a transmission-type media in the form a radio frequency and light wave transmissions. The claims do not fall within the technological arts and therefore, is non-statutory. See MPEP § 2106. Examiner suggest applicant to amend the limitations “program readable medium” to exclude said transmission-type media.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahalingham et al. (US 6,314,525).

In regard to claim 1, Mahalingham et al. disclosed a method in a device driver for handling a failure of a primary adapter in a data processing system, the method comprising:

monitoring the primary adapter for the failure (*MULTISPAN driver continuously monitors the activity of bound adapters, fig. 4, 508, col. 11 lines 49-63*); and

responsive to detecting the failure, switching to a standby adapter handled by the device driver (*when primary fails, one of the adapter in "READY" state is changed to "IN_USE", fig. 2, 62, col. 11 lines 32-48*).

In regard to claim 2, Mahalingham et al. disclosed the method of claim 1, wherein the failure is an occurrence of at least one of a network problem and a port problem (*network adapter has not received any packets for an extended period of time, col. 11 lines 49-63*).

In regard to claim 3, Mahalingham et al. disclosed the method of claim 1, wherein the primary adapter is on a first port and the standby adapter is on a second port and wherein the switching step comprises:

switching from the first port to the second port to switch to the standby adapter (*If failed NIC was a primary adapter, secondary NIC become the primary adapter, fig. 2, 62, col. 11 lines 18-25*).

In regard to claim 4, Mahalingham et al. disclosed the method of claim 3, wherein the first port is assigned an active media access control address prior to a switch from the primary

adapter to the standby adapter and wherein the switch from the first port to the second port is made by assigning the second port to an active media access control address (*MULTISPAN reset and changes the address of the primary adapter to the address generated from Virtula Network Address and changes the network address of secondary adapter to the MULTISPAN Virtual Network Address and uses it as the primary adapter, col. 14 lines 5-22*).

In regard to claim 5, Mahalingham et al. disclosed the method of claim 3 further comprising: initiating a soft reset of the first port (*if adapter is fixed it is changed to "READY" state, col. 12 lines 10-14*).

In regard to claim 6, Mahalingham et al. disclosed the method of claim 1, wherein the primary adapter is a network adapter (*network interface card, NIC, fig. 1, 18, col. 5-22*).

In regard to claim 7, Mahalingham et al. disclosed the method of claim 1, wherein the primary adapter is a graphics adapter (*PCI slots, fig. 14A, 1670, col. 24 lines 43-53*).

It is inherent that peripheral component interconnect (PCI) was used for older video cards or graphic adapter (http://en.wikipedia.org/wiki/Graphics_adapter 3/13/2006).

In regard to claim 8, Mahalingham et al. disclosed a data processing system for handling a failure of a primary adapter in a data processing system, the data processing system comprising:

monitoring means for monitoring the primary adapter for the failure (*MULTISPAN driver continuously monitors the activity of bound adapters, fig. 4, 508, col. 11 lines 49-63*); and

switching means for switching to a standby adapter (*when primary fails, one of the adapter in "READY" state is changed to "IN_USE", fig. 2, 62, col. 11 lines 32-48*) handled by the device driver responsive to detecting the failure (*MULTISPAN driver, fig. 4, 508, col. 11 lines 26-31*).

In regard to claim 9, Mahalingham et al. disclosed the data processing system of claim 8, wherein the failure is an occurrence of at least one of a network problem and a port problem (*network adapter has not received any packets for an extended period of time, col. 11 lines 49-63*).

In regard to claim 10, Mahalingham et al. disclosed the data processing system of claim 8, wherein the primary adapter is on a first port and the standby adapter is on a second port and wherein the switching means comprises:

means for switching from the first port to the second port to switch to the standby adapter (*If MULTISPAN driver detects failed NIC primary adapter, secondary NIC become the primary adapter, fig. 2, 62, col. 11 lines 18-25*).

In regard to claim 11, Mahalingham et al. disclosed the data processing system of claim 10, wherein the first port is assigned an active media access control address prior to a switch from the primary adapter to the standby adapter and wherein the switch from the first port to the

second port is made by assigning the second port to an active media access control address
(MULTISPAN reset and changes the address of the primary adapter to the address generated from Virtula Network Address and changes the network address of secondary adapter to the MULTISPAN Virtual Network Address and uses it as the primary adapter, col. 14 lines 5-22).

In regard to claim 12, Mahalingham et al. disclosed the data processing system of claim 10 further comprising: initiating means for initiating a soft reset of the first port *(if any adapter including the primary adapter is fixed it is changed to "READY" state, col. 12 lines 10-14).*

In regard to claim 13, Mahalingham et al. disclosed the data processing system of claim 8, wherein the primary adapter is a network adapter *(network interface card, NIC, fig. 1, 18, col. 5-22).*

In regard to claim 14, Mahalingham et al. disclosed the data processing system of claim 8, wherein the primary adapter is a graphics adapter *(PCI slots, fig. 14A, 1670, col. 24 lines 43-53).*

It is inherent that peripheral component interconnect (PCI) was used for older video cards or graphic adapter (http://en.wikipedia.org/wiki/Graphics_adapter 3/13/2006).

In regard to claim 15, Mahalingham et al. disclosed a computer program product in a computer readable medium for handling a failure of a primary adapter in a data processing system, the computer program product comprising:

first instructions for monitoring the primary adapter for the failure (*send “probe” packets with in a MultiSpan group, col. 4 lines 41-58*); and

second instructions for switching to a standby adapter (*when primary fails, one of the adapter in “READY” state is changed to “IN_USE”, fig. 2, 62, col. 11 lines 32-48*) handled by the device driver responsive to detecting the failure (*MULTISPAN driver, fig. 4, 508, col. 11 lines 26-31*).

In regard to claim 16, Mahalingham et al. disclosed the computer program product of claim 15, wherein the failure is an occurrence of at least one of a network problem and a port problem (*network adapter has not received any packets for an extended period of time, col. 11 lines 49-63*).

In regard to claim 17, Mahalingham et al. disclosed the computer program product of claim 15, wherein the primary adapter is on a first port and the standby adapter is on a second port and wherein the second instructions comprise:

sub-instructions for switching from the first port to the second port to switch to the standby adapter (*If MULTISPAN driver detects failed NIC primary adapter, secondary NIC become the primary adapter, fig. 2, 62, col. 11 lines 18-25*).

In regard to claim 18, Mahalingham et al. disclosed the computer program product of claim 17, wherein the first port is assigned an active media access control address prior to a switch from the primary adapter to the standby adapter and wherein the switch from the first port

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to the second port is made by assigning the second port to an active media access control address (*MULTISPAN* reset and changes the address of the primary adapter to the address generated from Virtual Network Address and changes the network address of secondary adapter to the *MULTISPAN* Virtual Network Address and uses it as the primary adapter, col. 14 lines 5-22).

In regard to claim 19, Mahalingham et al. disclosed the computer program product of claim 17 further comprising:

fourth instructions for initiating a soft reset of the first port (*if any adapter including the primary adapter is fixed it is changed to "READY" state, col. 12 lines 10-14*).

In regard to claim 20, Mahalingham et al. disclosed the computer program product of claim 15, wherein the primary adapter is a network adapter (*network interface card, NIC, fig. 1, 18, col. 5-22*).

In regard to claim 21, Mahalingham et al. disclosed the computer program product of claim 15, wherein the primary adapter is a graphics adapter (*PCI slots, fig. 14A, 1670, col. 24 lines 43-53*).

It is inherent that peripheral component interconnect (PCI) was used for older video cards or graphic adapter (http://en.wikipedia.org/wiki/Graphics_adapter 3/13/2006).

In regard to claim 22, Mahalingham et al. disclosed a server data processing for obtaining cultural context information from a client, the server data processing system comprising: a bus system;

a communications unit connected to the bus system (*server computer, fig. 3, 10, col. 6 lines 21-39*);

a memory connected to the bus system, wherein the memory includes a set of instructions (*software modules, col. 6 lines 21-39*); and

a processing unit (*MULTISPAN processes, col. 6 lines 46-57*) connected to the bus system, wherein the processing unit executes instructions for a device driver to monitor the primary adapter for the failure and, switch to a standby adapter handled by the device driver in response to detecting the failure (*perform a transparent fail-over when primary adapter fails, col. 6 lines 46-57*).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Loan Truong whose telephone number is (571) 272-2572. The examiner can normally be reached on M-F from 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Loan Truong
AU 2114
Patent Examiner



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